UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES H. CUNNINGHAM, Petitioner, vs. MATTHEW CATE, Secretary, Respondent.	Civil No. 07cv2183-DMS (RBB) **ORDER SUA SPONTE SUBSTITUTING RESPONDENTS**

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a First Amended Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner has named John Marshall, the Warden of the institution where he was confined at the time of filing, as Respondent. Petitioner has now filed a notice of change of address indicating he has been transferred to another prison.

A writ of habeas corpus acts upon the custodian of the state prisoner. See 28 U.S.C. § 2242; Rule 2(a), 28 U.S.C. foll. § 2254. Because Petitioner's place of confinement has changed, the Warden of his former prison is no longer a proper Respondent. In order to conform with the requirements of Rule 2(a) of the Rules Governing § 2254 Cases and to avoid changing the Respondent again if Petitioner is transferred to another prison or paroled, the Court hereby sua sponte **ORDERS** the substitution of Matthew Cate, the Secretary of the California Department of Corrections and Rehabilitation, as Respondent in place of "John Marshall." See

Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (stating that the respondent in § 2254 proceedings may be the chief officer in charge of state penal institutions).

The Clerk of the Court shall modify the docket to reflect "Matthew Cate, Secretary" as Respondent in place of "John Marshall."

IT IS SO ORDERED.

DATED: July 15, 2008

Ruben B. Brooks
United States Magistrate Judge

CC: ALL PARTIES